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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT JESSE MILLER,

Defendant and Appellant.

C081268

(Super. Ct. No. 62123394B)

Defendant Robert Jesse Miller pled no contest to five counts (two counts of grand theft, one count of commercial burglary, and two counts of vandalism). At the time, he was serving a Nevada state sentence but he was temporarily in the custody of the Placer County Sheriff to face his California charges. When the trial court imposed sentence for these California convictions, the court did not award credits for his time spent in Placer County because that time was attributable to his Nevada sentence.

On appeal, defendant contends his plea was involuntary. He argues his counsel rendered ineffective assistance in failing to advise him that he would not receive presentence custody credits for his time in Placer County. And but for that omission he

would not have pled. We disagree and affirm. But first we will, at defendant's request, strike an erroneously imposed "incarceration fee."

BACKGROUND

Defendant burglarized several car washes in 2013. In late 2015, he pled no contest to two counts of grand theft, one count of commercial burglary, and two counts of vandalism. He also admitted to a prior prison term. In exchange, the prosecution dismissed various other counts and agreed to a stipulated sentence.

A probation report was waived, but prior to sentencing, a memorandum on credits and restitution was prepared. The memorandum stated: "The defendant is currently serving a prison commitment for the State of Nevada, [and] therefore, not entitled to dual credit."

At sentencing, the court imposed a three-year eight-month aggregate term, to be served consecutive to the Nevada sentence. Defendant would be transferred back to Nevada to finish his Nevada sentence and then returned to California to serve his newly imposed sentence.

When the question of credits came up at sentencing, defense counsel stated, "the time he's currently serving in Placer County Jail can be credited to Nevada; however, I do believe he had credits from at least one arrest, perhaps another one on a warrant as well." The court then awarded credits for defendant's custody time prior to the Nevada sentence: 24 days (12 actual, 12 conduct).

Four days later, defendant moved to award additional credits. In his motion, he wrote: "I am seeking credits for time I have served at [Placer County Sheriff's Office]. I believe I'm entitled to 240 regular time and 240 good time credits which does not show on the Court's minutes. The only reason I took the plea deal was because I believe I was entitled to the above 480 day's credits. Therefore if I don't get those credits I wish to withdraw my plea deal."

Before the trial court could hear the motion, defendant was returned to Nevada. Defendant filed a timely appeal, and the trial court granted his request for a certificate of probable cause.

DISCUSSION

I

Defense Counsel Did Not Render Ineffective Assistance

On appeal, defendant contends his plea was involuntary. He argues his counsel rendered ineffective assistance in failing to advise him that he would not receive 465 days of presentence custody credits (233 actual, 232 conduct). And but for that omission he would not have pled. We conclude no ineffective assistance occurred, and defendant's contention therefore fails.

Preliminarily, defendant was not entitled to have his time in Placer custody applied to his newly imposed sentence because the Placer time was attributable to his Nevada sentence. (See Pen. Code, § 2900.5, subd. (b) [“credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted”].)

As to his ineffective assistance claim, defendant does not claim his counsel gave erroneous advice. Nor does he claim his counsel failed to inform him of a material consequence of his plea. (See, e.g., *Padilla v. Kentucky* (2010) 559 U.S. 356, 374 [176 L.Ed.2d 284, 299] [“counsel must inform her client whether his plea carries a risk of deportation”].) Rather, his claim is essentially that his counsel failed to disabuse him of the mistaken and unreasonable belief that he would receive dual credit. We do not view that as ineffective assistance.¹ Nor are we aware of authority for doing so.

¹ Indeed, the record offers some evidence defendant knew he would not receive dual credits. The memorandum on credits and restitution, prepared in advance of sentencing, stated: “The defendant is currently serving a prison commitment for the State of Nevada,

Defendant's contention that his plea is invalid therefore fails.

II

The Incarceration Fee Must Be Struck

Defendant also challenges the imposition of a \$118 "incarceration fee," arguing the trial court never imposed the fee at sentencing. The People concede error, and we agree.

The abstract of judgment reflects a \$118 "incarceration fee." No mention of that fee was made at sentencing. We will therefore strike the fee. (See *People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388 [the abstract must accurately summarize the oral pronouncement, including all fines and fees].)

DISPOSITION

We modify the judgment to strike the \$118 "incarceration fee." The trial court is directed to prepare a corrected abstract of judgment and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Blease, J.

[and] therefore, not entitled to dual credit." And sentencing was continued after defendant objected to the report's recommended restitution as to one of the counts.